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IN THE

# Supreme Court of the United States

**October Term, 1940.**

No. 674

JOSEPH SCIORTINO,

*Petitioner,*

AGAINST

UNITED STATES OF AMERICA,

*Respondent.*

***Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit and Brief in Support Thereof.***

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No.

## Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

*To the Chief Justice and Associate Justices of the United States Supreme Court:*

JOSEPH SCIORTINO, the petitioner above named, respectfully prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit, affirming a judgment of conviction and sentence imposed upon the petitioner in a criminal cause in the United States District Court for the District of Connecticut. The Judgment of the Circuit Court of Appeals was filed on November 12th, 1940.

### Question Presented.

Was the evidence against petitioner sufficient to make out a *prima facie* case?

## Statute Involved.

"If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000 or imprisoned not more than two years, or both."

Title 18, Sec. 88, United States Code, Annotated.

## Statement.

Petitioner was indicted in the United States District Court for the District of Connecticut with ten others charged with conspiracy to carry on business of distillers without giving bond, etc., in violation of Section 88, Title 18, United States Code, Annotated. Pleas of guilty were interposed by six, one was not apprehended, three were tried and convicted, among them petitioner and one was acquitted.

The Government proved an unregistered still was seized at Norwalk, Conn., on October 25th, 1939 (R. 80). A second still was seized at Stamford, November 28th, 1939 (R. 267). The indictment charged one conspiracy. The Government relied entirely upon circumstantial evidence as to petitioner. There was no testimony whatever against him connecting him directly with either still or with a conspiracy. Petitioner was seen on only one occasion in front of the bakery of defendant Santagate on September 28th (R. 166-167). Santagate conducted a bakery in Norwalk and furnished the supplies for the still. Petitioner was seen on several occasions in conversation with other persons alleged to be conspirators, in White Plains where he lived (R. 599). Certain toll slips showing telephone calls to petitioner's home from August 5th, 1939 to November 24th, were received in evidence (R. 70, 81).

**Reason Urged for Allowance of Writ.**

An important question of Federal Law is involved as the Circuit Court of Appeals has failed to follow the latest decision of this Court on the sufficiency of evidence of conspiracy.

Where the evidence consists only of a record of telephone calls to the home of an alleged conspirator and of the accused being seen with one or more of the alleged conspirators on several occasions the Court should dismiss the indictment or direct a verdict for defendant.

WHEREFORE, it is respectfully prayed that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding it to certify and send to this Court for its review and determination, a full and complete transcript of the record and all proceedings in the case at bar and that the judgment of said United States Circuit Court of Appeals be reversed by this Honorable Court, and that your petitioner may have such other, further and different relief in the premises as to this Court may seem just.

And your petitioner will ever pray.

JOSEPH SCIORTINO,
*Petitioner.*

By LEO H. KLUGHERZ,
*Counsel.*